

## HOUSE BILL NO. 326

INTRODUCED BY PETERSON, CLARK, SCHMIDT

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE PENALTY FOR A SECOND OR SUBSEQUENT OFFENSE OF POSSESSION OF METHAMPHETAMINE; REQUIRING THE DEPARTMENT OF CORRECTIONS TO CONTRACT FOR THE ESTABLISHMENT AND MAINTENANCE OF RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAMS AND TO ADOPT RULES FOR THE PROGRAMS; AND AMENDING SECTIONS 41-5-206 ~~AND~~ 45-9-102, AND 53-1-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) assault with a weapon as defined in 45-5-213;

(v) robbery as defined in 45-5-401;

(vi) burglary or aggravated burglary as defined in 45-6-204;  
(vii) aggravated kidnapping as defined in 45-5-303;  
(viii) possession of explosives as defined in 45-8-335;  
(ix) criminal distribution of dangerous drugs as defined in 45-9-101;  
(x) criminal possession of dangerous drugs as defined in 45-9-102(4) ~~and (5)~~ through (6);  
(xi) criminal possession with intent to distribute as defined in 45-9-103(1);  
(xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;  
(xiii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;  
(xiv) escape as defined in 45-7-306;  
(xv) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xiv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) ~~that~~ the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime

enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses."

**Section 2.** Section 45-9-102, MCA, is amended to read:

**"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in Title 50, chapter 46, a person commits the offense of criminal possession of dangerous drugs if the person possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or by both.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500

or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) (a) A person convicted of a second or subsequent offense of criminal possession of methamphetamine shall be punished by:

(i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

(ii) commitment to the department of corrections for placement in an appropriate correctional facility or program for a term of not less than 3 years or more than 5 years. If a term in excess of 3 years is imposed, that part of the term that is in excess of 3 years must be suspended. If the person successfully completes a residential methamphetamine treatment program operated or approved by the department of corrections during the first 3 years of a term, the remainder of the first 3 years of the term must be suspended. The court may also impose a fine not to exceed \$50,000.

(b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place the person in a residential methamphetamine treatment program operated or approved by the department of corrections or in a correctional facility or program. THE RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAM MUST CONSIST OF TIME SPENT IN A RESIDENTIAL METHAMPHETAMINE TREATMENT FACILITY AND TIME SPENT IN A COMMUNITY-BASED PRERELEASE CENTER.

(c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

(i) the person to abide by the standard conditions of probation established by the department of corrections;

(ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person if the person is financially able to pay those costs;

(iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption on the premises or where gambling takes place;

(iv) that the person may not consume alcoholic beverages;

(v) the person to enter and remain in an aftercare program as directed by the person's probation officer;

and

(vi) the person to submit to random or routine drug and alcohol testing.

~~(5)(6)~~ A person convicted of criminal possession of dangerous drugs not otherwise provided for in

~~subsection (2), (3), or (4)~~ subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

~~(6)(7)~~ A person convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

~~(7)(8)~~ Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice are exempt from this section."

**SECTION 3. SECTION 53-1-203, MCA, IS AMENDED TO READ:**

**"53-1-203. Powers and duties of department of corrections.** (1) The department of corrections shall:

(a) adopt rules necessary to carry out the purposes of 41-5-123 through 41-5-125, rules necessary for the siting, establishment, and expansion of prerelease centers, rules for the establishment and maintenance of residential methamphetamine treatment programs, and rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law. However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3.

(b) subject to the functions of the department of administration, lease or purchase lands for use by correctional facilities and classify those lands to determine those that may be most profitably used for agricultural purposes, taking into consideration the needs of all correctional facilities for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in correctional facilities;

(c) contract with private, nonprofit Montana corporations to establish and maintain:

(i) prerelease centers for purposes of preparing inmates of a Montana prison who are approaching parole eligibility or discharge for release into the community, providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201. The

1 centers shall provide a less restrictive environment than the prison while maintaining adequate security. The  
2 centers must be operated in coordination with other department correctional programs. This subsection does  
3 not affect the department's authority to operate and maintain prerelease centers.

4 (ii) residential methamphetamine treatment programs for the purpose of alternative sentencing as  
5 provided for in 45-9-102, 46-18-201, 46-18-202, and any other sections relating to alternative sentences for  
6 persons convicted of possession of methamphetamine. The department shall issue a request for proposals using  
7 a competitive process and shall follow the applicable contract and procurement procedures in Title 18.

8 (d) utilize the staff and services of other state agencies and units of the Montana university system,  
9 within their respective statutory functions, to carry out its functions under this title;

10 (e) propose programs to the legislature to meet the projected long-range needs of corrections, including  
11 programs and facilities for the custody, supervision, treatment, parole, and skill development of persons placed  
12 in correctional facilities or programs;

13 (f) encourage the establishment of programs at the local and state level for the rehabilitation and  
14 education of felony offenders;

15 (g) administer all state and federal funds allocated to the department for youth in need of intervention  
16 and delinquent youth, as defined in 41-5-103;

17 (h) collect and disseminate information relating to youth in need of intervention and delinquent youth;

18 (i) maintain adequate data on placements that it funds in order to keep the legislature properly informed  
19 of the specific information, by category, related to youth in need of intervention and delinquent youth in  
20 out-of-home care facilities;

21 (j) provide funding for and place youth who are adjudicated to be delinquent or in need of intervention  
22 and who are committed to the department;

23 (k) administer youth correctional facilities;

24 (l) provide supervision, care, and control of youth released from a state youth correctional facility; and

25 (m) use to maximum efficiency the resources of state government in a coordinated effort to:

26 (i) provide for delinquent youth committed to the department; and

27 (ii) coordinate and apply the principles of modern correctional administration to the facilities and  
28 programs administered by the department.

29 (2) The department and a private, nonprofit Montana corporation may not enter into a contract under  
30 subsection (1)(c) for a period that exceeds 10 years. The provisions of 18-4-313 that limit the term of a contract

1 do not apply to a contract authorized by subsection (1)(c). Prior to entering into a contract for a period of 10  
2 years, the department shall submit the proposed contract to the legislative audit committee. The legislative audit  
3 division shall review the contract and make recommendations or comments to the legislative audit committee.  
4 The committee may make recommendations or comments to the department. The department shall respond  
5 to the committee, accepting or rejecting the committee recommendations or comments prior to entering into the  
6 contract.

7 (3) The department of corrections may enter into contracts with nonprofit corporations or associations  
8 or private organizations to provide substitute care for youth in need of intervention and delinquent youth in youth  
9 correctional facilities."

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